

David H. Krieger, Esq.
Nevada Bar No. 9086
HAINES & KRIEGER, LLC
8985 S. Eastern Ave., Suite 350
Henderson, NV 89123
(T) (702) 880-5554
(F) (702) 967-6665
dkrieger@hainesandkrieger.com

Attorneys for Plaintiff
ANDREA THOMAS

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANDREA THOMAS,

Plaintiff,

V.

SMITH-PALLUCK ASSOCIATES CORP.
d/b/a LAS VEGAS ATHLETIC CLUBS,

Defendants.

Case No. 2:17-cv-02001-MMD-CWH

FIRST AMENDED STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED by and between Plaintiff ANDREA THOMAS (“Plaintiff”) and Defendant SMITH-PALLUCK ASSOCIATES CORP. d/b/a LAS VEGAS ATHLETIC CLUBS (collectively, the “Parties”), by and through their counsel of record, as follows:

WHEREAS, documents and information have been and may be sought, produced or exhibited by and among the parties to this action relating to trade secrets, confidential research, development, technology or other proprietary information belonging to the defendants and/or personal income, credit and other confidential information of Plaintiff.

THEREFORE, an Order of this Court protecting such confidential information shall be and hereby is made by this Court on the following terms:

1. This Order shall govern the use, handling and disclosure of all documents, testimony or information produced or given in this action which are designated to be subject to

1 this Order in accordance with the terms hereof.

2 2. Any party or non-party producing or filing documents or other materials in this
3 action may designate such materials and the information contained therein subject to this Order
4 by typing or stamping on the front of the document, or on the portion(s) of the document for
5 which confidential treatment is designated, "Confidential."

6 3. To the extent any motions, briefs, pleadings, deposition transcripts, or other
7 papers to be filed with the Court incorporate documents or information subject to this Order, the
8 party filing such papers shall designate such materials, or portions thereof, as "Confidential," and
9 shall file them with the clerk under seal; provided, however, that a copy of such filing having the
10 confidential information deleted therefrom may be made part of the public record. Any party
11 filing any document under seal must comply with the requirements of Local Rules.

12 4. All documents, transcripts, or other materials subject to this Order, and all
13 information derived therefrom (including, but not limited to, all testimony, deposition, or
14 otherwise, that refers, reflects or otherwise discusses any information designated Confidential
15 hereunder), shall not be used, directly or indirectly, by any person, including Plaintiff and
16 SMITH-PALLUCK ASSOCIATES CORP. d/b/a LAS VEGAS ATHLETIC CLUBS,
17 commercial or competitive purposes or for any purpose whatsoever other than solely for the
18 preparation and trial of this action in accordance with the provisions of this Order.

19 5. All depositions or portions of depositions taken in this action that contain
20 confidential information may be designated as "Confidential" and thereby obtain the protections
21 accorded other confidential information. The parties shall have twenty-one (21) days from the
22 date a deposition is taken, or fourteen (14) days from the date a deposition transcript is received,
23 whichever date is greater, to serve a notice to all parties designating portions as "Confidential."
24 Until such time, all deposition testimony shall be treated as confidential information. To the
25 extent any designations are made on the record during the deposition, the designating party need
26 not serve a notice re-designating those portions of the transcript as confidential information.
27 Any party may challenge any such designation in accordance with Paragraph 14 of this Order.

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1 6. Except with the prior written consent of the individual or entity designating a
2 document or portions of a document as “Confidential,” or pursuant to prior Order after notice,
3 any document, transcript or pleading given “Confidential” treatment under this Order, and any
4 information contained in, or derived from any such materials (including but not limited to, all
5 deposition testimony that refers, reflects or otherwise discusses any information designated
6 confidential hereunder) may not be disclosed other than in accordance with this Order and may
7 not be disclosed to any person other than: (a) the Court and its officers; (b) parties to this
8 litigation; (c) counsel for the parties, whether retained counsel or in-house counsel and
9 employees of counsel assigned to assist such counsel in the preparation of this litigation; (d) fact
10 witnesses subject to a proffer to the Court or a stipulation of the parties that such witnesses need
11 to know such information; (e) present or former employees of the producing party in connection
12 with their depositions in this action (provided that no former employees shall be shown
13 documents prepared after the date of his or her departure); and (f) experts specifically retained as
14 consultants or expert witnesses in connection with this litigation.

15 7. Documents produced pursuant to this Order shall not be made available to any
16 person designated in Subparagraph 6 (f) unless he or she shall have first read this Order, agreed
17 to be bound by its terms, and signed the attached Declaration of Compliance.

18 8. Third parties who are the subject of discovery requests, subpoenas or
19 depositions in this case may take advantage of the provisions of this Protective Order by
20 providing the parties with written notice that they intend to comply with and be bound by the
21 terms of this Protective Order.

22 9. All persons receiving any or all documents produced pursuant to this Order shall
23 be advised of their confidential nature. All persons to whom confidential information and/or
24 documents are disclosed are hereby enjoined from disclosing same to any person except as
25 provided herein, and are further enjoined from using same except in the preparation for and trial
26 of the above-captioned action between the named parties thereto. No person receiving or
27 reviewing such confidential documents, information or transcript shall disseminate or disclose
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1 them to any person other than those described above in Paragraph 6 and for the purposes
2 specified, and in no event, shall such person make any other use of such document or transcript.

3 10. Nothing in this Order shall prevent a party from using at trial any information or
4 materials designated "Confidential."

5 11. This Order has been agreed to by the parties to facilitate discovery and the
6 production of relevant evidence in this action. Neither the entry of this Order, nor the
7 designation of any information, document, or the like as "Confidential," nor the failure to make
8 such designation, shall constitute evidence with respect to any issue in this action.

9 12. Inadvertent failure to designate any document, transcript, or other materials
10 "Confidential" will not constitute a waiver of an otherwise valid claim of confidentiality
11 pursuant to this Order, so long as a claim of confidentiality is promptly asserted after discovery
12 of the inadvertent failure. If a party designates a document as "Confidential" after it was
13 initially produced, the receiving party, on notification of the designation, must make a
14 reasonable effort to assure that the document is treated in accordance with the provisions of
15 this Order, and upon request from the producing party certify that the designated documents
16 have been maintained as confidential information.

17 13. Within sixty (60) days after the final termination of this litigation, all documents,
18 transcripts, or other materials afforded confidential treatment pursuant to this Order, including
19 any extracts, summaries or compilations taken therefrom, but excluding any materials which in
20 the good faith judgment of counsel are work product materials, shall be returned to the Producing
21 Party. In lieu of return, the parties may agree to destroy the documents, to the extent practicable.

22 14. In the event that any party to this litigation disagrees at any point in these
23 proceedings with any designation made under this Protective Order, the parties shall first try to
24 resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the
25 party objecting to the designation may seek appropriate relief from this Court. **The designating**
26 **party shall have the burden of proving that any document designated as CONFIDENTIAL**
27 **is entitled to such protection.** During the pendency of any challenge to the designation of a
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1 document or information, the designated document or information shall continue to be treated as
2 "Confidential" subject to the provisions of this Protective Order.

3 15. Nothing herein shall affect or restrict the rights of any party with respect to its
4 own documents or to the information obtained or developed independently of documents,
5 transcripts and materials afforded confidential treatment pursuant to this Order.

6 16. The Court retains the right to allow disclosure of any subject covered by this
7 stipulation or to modify this stipulation at any time in the interest of justice. In particular, all
8 discovery in this matter, whether designated confidential or otherwise, may be used in the matter
9 of *Kibbee v. Smith-Palluck Associates Corp. d/b/a Las Vegas Athletic Clubs*, No. 18-cv-1848-
10 APG-GWF (D. Nev.), notwithstanding its confidentiality designation.

11 **IT IS SO STIPULATED.**

12 Dated April 9, 2019

14 /s/ Miles N. Clark, Esq.

15 Matthew I. Knepper
16 Nevada Bar No. 12796
17 Miles N. Clark
18 Nevada Bar No. 13848
19 KNEPPER & CLARK LLC
20 10040 W. Cheyenne Ave., No. 170-109
21 Las Vegas, NV 89129

22 DAVID H. KRIEGER
23 Nevada Bar No. 9086
24 HAINES & KRIEGER, LLC
25 8985 S. Eastern Ave., Suite 350
26 Henderson, NV 89123
27 Attorneys for Plaintiff and Proposed
28 Limited Intervenor

/s/ Joel Tasca, Esq.

Joel E. Tasca
Nevada Bar No. 14124
Lindsay C. Demaree
Nevada Bar No. 11949
Stacy H. Rubin
Nevada Bar No. 9298
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Attorneys for Defendant

24 **ORDER**

25 **IT IS SO ORDERED.**

27 April 11, 2019
28 Dated: _____, _____
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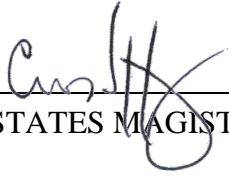

UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

DECLARATION OF COMPLIANCE

I, _____, declare as follows:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4 I have received a copy of the Stipulated Protective Order entered in this action on
_____, 20___.

5. I have carefully read and understand the provisions of this Stipulated Protective Order.

6. I will comply with all provisions of this Stipulated Protective Order.

7. I will hold in confidence, and will not disclose to anyone not qualified under the Stipulated Protective Order, any information, documents or other materials produced subject to this Stipulated Protective Order.

8. I will use such information, documents or other materials produced subject to this Stipulated Protective Order only for purposes of this present action.

9. Upon termination of this action, or upon request, I will return and deliver all information, documents or other materials produced subject to this Stipulated Protective Order, and all documents or things which I have prepared relating to the information, documents or other materials that are subject to the Stipulated Protective Order, to my counsel in this action, or to counsel for the party by whom I am employed or retained or from whom I received the documents.

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10. I hereby submit to the jurisdiction of this Court for the purposes of enforcing the Stipulated Protective Order in this action. I declare under penalty of perjury under the laws of the United States that the following is true and correct.

Executed this ____ day of _____, 2019 at _____.

QUALIFIED

PERSON

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